

REMARKS

This Amendment is in response to the final Office Action mailed March 16, 2005 (hereinafter, "the Office Action") and the Advisory Action of May 31, 2005 ("Advisory Action"). The specification is under objection and all pending claims (1-21) stand rejected under 35 U.S.C. § 102(e).

All references to the claims, except as noted, will be made with reference to the claim list provided in the Amendment submitted October 22, 2004. All references to "the Office Action," except as noted, will be referencing the most recent Office Action dated March 16, 2005. Cited line numbers will count every printed line, except the page header, but including section headings, unless line numbering is provided in the cited document, e.g., published patents. If there is any confusion or questions regarding any aspect of this Amendment, the Examiner is invited to contact the undersigned.

Status

Applicant notes with appreciation that all previous rejections and objections have been withdrawn in response to the Amendment filed October 22, 2004. Pending claims 1-6, 8-13, and 15-20 stand rejected under one of 35 U.S.C. §§ 102(b), 103(a) based on newly cited art.

Amendment

The Specification is amended to physically incorporate material previously incorporated by reference. Specifically, related application 09/764,771, which was incorporated by reference in the paragraph bridging pages 2 and 3 of the original disclosure, includes a section beginning with the subheading "Re-Partitioning the Operating System". This entire section, which extends to the subheading "Capsule Operation," is physically incorporated by this Amendment. Furthermore, a new Figure 13 is added by this Amendment. This Figure is referenced in the newly added text. The only changes made to the text and Figure 13 is to change the reference numbers so that they do not duplicate reference numbers already used.

The claims are Amended to remove all recitation of the term, "first-class object". Although those skilled in the art have a conception of the meaning of this term, Applicant intends to rely instead on only those aspects of the first class object that distinguish over the

prior art of record. Therefore, the term "first class object" is removed from all pending claims. Furthermore, the term, "compute capsule" is further defined as including portions of the operating system that are host-dependent and excluding shared resources and the state necessary to manage them. These new limitations are supported by the portions of the specification imported from the related application by this Amendment. Specifically, reference is made to the first and last paragraphs of the imported text.

No new matter is introduced by this Amendment.

Rejections

Claims 1, 3, 6, 8, 10, 13, 15, 17, and 20 stand rejected under 35 U.S.C. § 102(b) for being anticipated by "Technical White Paper," VMware, Inc., hereinafter referred to as, "VMware." Applicant respectfully traverses because not each and every limitation set forth in the claims is shown by the reference.

Claims 2, 4, 5, 9, 11, 12, 16, and 18-19 stand rejected under 35 U.S.C. § 103(a) for being unpatentable over VMware in view of U.S. Patent 6,061,7975 issued to Dircks et al., hereinafter referred to as "Dircks." Applicant respectfully traverses because not each and every limitation is taught or suggested by the prior art and further, because there was no motivation to combine the references at the time the invention was made.

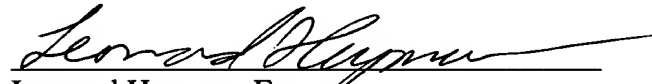
Applicant respectfully point out that each independent claim now includes partitioning an operating system so that host-dependent and personalized elements are included in the compute capsule while shared resources and a state necessary to manage them are excluded. None of the references show, teach or suggest this feature. VMware, for instance, includes an entire operating system in each "encapsulation". See, for example, the figure on page 1 of VMware. Thus, no portion of this operating system is excluded.

For the reasons stated above, Applicant respectfully submits that the present application is in condition for allowance. A Notice of Allowance is therefore respectfully requested.

If the Examiner has any questions concerning the present amendment, the Examiner is kindly requested to contact the undersigned at (408) 774-6933. If any other fees are due in connection with filing this amendment, the Commissioner is also authorized to charge Deposit

Account No. 50-0805 (Order No. SUNMP586). A duplicate copy of the transmittal is enclosed for this purpose.

Respectfully submitted,
MARTINE PENILLA & GENCARELLA, LLP

A handwritten signature in cursive script, appearing to read "Leonard Heyman", written over a horizontal line.

Leonard Heyman, Esq.
Reg. No. 40, 418

710 Lakeway Drive, Suite 200
Sunnyvale, CA 94085
Telephone: (408) 749-6900
Facsimile: (408) 749-6901
Customer Number 32291

IN THE DRAWINGS

Amendment to the Drawings:

Please add the new drawing sheet containing Figure 13 attached hereto. New Figure 13 shows the partitioning of the operating system and is taken from U.S. Patent Application 09/764,771, which was incorporated by reference in the paragraph bridging pages 2 and 3 of the originally-filed specification.